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ABSTRACT

At the request of Congresswoman Edith Green, the Comptroller General of the United States reviewed grant procedures covering two awards made by the Office of Education (OE). The first award, made to the Berkeley Unified School District, was funded under Title VII of the Elementary and Secondary Education Act of 1965, as amended, which provides funds to local educational agencies to develop and carry out demonstration bilingual and bicultural programs. The audit indicated that these funds were used for the development of a national television series although the provisions of Title VII require that grant funds be used only to assist children within a school district and that the Commissioner of Education award such a grant only after determining such a need. A second award was made to Bilingual Children's Television, Inc. (BC/TV), a nonprofit Oakland corporation, under the authority of the Emergency School Aid Act, which authorized OE to provide financial assistance to local educational agencies and public and private nonprofit organizations for special needs incident to the desegregation of elementary and secondary schools. The basic objective of the BC/TV proposal was to develop a bilingual and bicultural (Spanish-English) educational television show to be aired nationally. This award, made by the Commissioner of Education-elect, was granted over strong objections by OE officials after BC/TV's failure to perform under the first grant and management deficiencies disclosed by the Health, Education, and Welfare (HEW) audit agency. The audit agency concluded that BC/TV suffered from delays in funding. (Author/DN)

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Examination Of Grants Awarded To The Berkeley Unified School District And To Bilingual Children's Television, Inc.

B-164031(1)

Office of Education
Department of Health, Education,
and Welfare

EA 006 441

BY THE COMPTROLLER GENERAL OF THE UNITED STATES

SEPT. 4, 1974

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-164031(1)

The Honorable Edith Green
House of Representatives

Dear Mrs. Green:

This is our report on Office of Education, Department of Health, Education, and Welfare, grant awards made to the Berkeley Unified School District, Berkeley, California, and to Bilingual Children's Television, Inc., Oakland, California. We made our review pursuant to your request of February 11, 1974.

As you instructed, we did not obtain formal comments from agency officials or the grantees. We do not plan to distribute this report further unless you agree or publicly announce its contents.

Sincerely yours,

Elmer B. Staats

Comptroller General
of the United States

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ABBREVIATIONS

BC/TV	Bilingual Children's Television, Inc.
HEW	Department of Health, Education, and Welfare
OE	Office of Education

COMPTROLLER GENERAL'S REPORT TO THE HONORABLE EDITH GREEN HOUSE OF REPRESENTATIVES

EXAMINATION OF GRANTS AWARDED TO THE BERKELEY UNIFIED SCHOOL DISTRICT AND TO BILINGUAL CHILDREN'S TELEVISION, INC.

Office of Education
Department of Health, Education, and Welfare
B-164031(1)

DIGEST

WHY THE REVIEW WAS MADE

GAO was asked to review Office of Education (OE) grant awards to the Berkeley Unified School District, Berkeley, California, and to Bilingual Children's Television, Inc. (BC/TV), Oakland, California. GAO reviewed the basis for the awards and the results achieved.

The grants were made to develop a bilingual and bicultural children's television show to be aired nationally for children from 3 to 8 years old.

FINDINGS AND CONCLUSIONS

The first grant totaling $889,980 was awarded to the Berkeley school district on April 6, 1972, under authority of title VII of the Elementary and Secondary Education Act, as amended. The grant represented the first phase of funding for the project.

An October 6, 1972, amendment to the grant provided an additional $1.5 million of title VII funds to the school district. To accomplish the purposes of the grant, the school district entered into contracts with BC/TV.

The second grant award totaling $3.5 million was made directly to BC/TV for a 1-year period commencing June 30, 1973. This grant was awarded under the authority of the Emergency School Aid Act, enacted June 23, 1972.

First grant

Project proposals submitted for funding under the first grant addressed needs of Spanish-speaking and Spanish-origin children nationwide. Title VII conversely is intended to provide funds to local education agencies to assist children within a local school district, and the proposals did not indicate that grant funds would be used to assist children of the Berkeley school district. (See p. 2.)

Several legislative authorities were considered as a source of funds for the first grant. At the time of the award, however, sufficient funds were available only under title VII.

Because the act precluded BC/TV--the prime contractor--from applying directly, OE requested the Berkeley school district to act as an applicant, thereby satisfying technical requirements of the law.

The school district was established as a funding agency through which contractual arrangements could be made with BC/TV for the grant. The school district was compensated for acting as the applicant on the

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basis of a fixed overhead rate applied to the total grant award. (See p. 3.)

OE did not follow established procedures for awarding title VII funds. (See p. 5.) The grant was a sole source award but OE was unable to provide a written justification supporting procurement on a sole source basis. (See p. 7.)

OE has since improved its grant procedures by requiring that noncompetitive grant applications be reviewed by a sole source board. (See p. 7.)

OE files and discussions with OE officials showed that the grant received the attention and support of top OE and Department of Health, Education, and Welfare (HEW) officials and the White House. (See p. 7.)

Second grant

The second grant award was made at the direction of the Commissioner of Education-Designate over the strong objections of program and grants officials. These OE officials were against the second grant award primarily because of BC/TV's failure to perform under the first grant and management deficiencies disclosed by the HEW Audit Agency. The Commissioner-Designate considered the following factors in making the award:

--The BC/TV proposal received a high rating from an impartial review panel.

--The grant award provided for special conditions to correct managerial and fiscal weaknesses disclosed by the HEW Audit Agency.

--BC/TV received grant awards from two independent foundations which represented, among other things, an opportunity to expand the impact of Federal funds. (See p. 10.)

Review panel

Of 52 applications submitted under the educational television programing section of the Emergency School Aid Act, BC/TV's proposal received the second highest rating by an independent review panel. Of nine proposals rated in the bilingual and bicultural category, the BC/TV proposal was rated first. (See p. 13.)

Criteria used by the panelists does not specifically consider applicants' past performance. Panelists said they did not consider past performance in their evaluations. (See p. 13.)

OE officials said if the panel had considered past performance as a criterion and if it was heavily weighted in the point system, awards would be limited to major educational television stations in the country. They said that to limit the number of awards in this manner would contradict the intent of the Emergency School Aid Act.

Although GAO recognizes heavy emphasis placed on past performance as a criterion would tend to limit grant awards to established television stations, past performance, in its opinion, should be given some consideration particularly where major dollar amounts are involved.

Some consideration to past performance would increase the possibility of a project's success and insure that available funds are used to

support the most worthwhile projects. (See p. 14.)

Special grant terms and conditions

The grant was subject to detailed special conditions and safeguards to correct BC/TV managerial and financial weaknesses which the Audit Agency disclosed in the first grant. OE assigned an onsite project officer to insure BC/TV's compliance with the special conditions. (See p. 15.)

Settlement of HEW audit findings

The HEW Audit Agency reported that the grantee had spent $325,337 in excess of the total first grant award of $2,389,980. Of the total costs of $2,715,317 reported for the period, the Audit Agency recommended disallowance of $250,709 which consisted of $93,279 in direct costs and $157,430 in overhead.

The Audit Agency also questioned $947,786 in BC/TV subcontracts, and $1,516,822 in costs which were attributed to the basic contracts between the school district and BC/TV because the OE grants officer had not approved the contracts.

The school district agreed with the disallowance of $83,279, which included expenditures for travel, office furnishings, and salaries, and disagreed with a recommended disallowance for overhead totaling $157,430. The principal point of disagreement was the overhead rate used. (See p. 18.)

Another major consideration in the final settlement was an OE exception to a cost-plus-a-percentage-of-cost BC/TV subcontract totaling $235,604.

On March 21, 1974, the Commissioner of Education approved payment to the grantee of $2,389,980, the total amount of the first grant award.

The total amount of cost disallowances was $325,337--the exact amount of the expenditures the school district incurred in excess of the grant award.

OE's settlement included the following considerations:

--It would be unreasonable and imprudent for OE to refuse to honor a pregrant agreement with the school district on the overhead rate to be applied.

--A court of law would not sustain the contention that compensation be denied to a grantee for benefits bestowed simply because those benefits were contracted for on an illegal cost-plus-a-percentage-of-cost basis.

--The school district would be willing to settle on $325,337 in disallowances since BC/TV had obtained funds from nongovernment sources to pay the cost overrun.

--Release of all grant funds would permit the school district to recover its promised overhead and the advances of cash to BC/TV, and should leave the school district financially whole. (See p. 20.)

Accomplishments

Sixty-five 1/2-hour shows were completed under the two grants at a cost to OE of about $5.9 million, and the Public Broadcasting Service agreed to make the shows available to participating stations in the fall of 1974.

Although BC/TV produced 65 shows, considerable controversy existed over its performance, particularly during the latter months of the first grant. BC/TV did not meet a major production goal, according to the HEW audit report, only one of five test shows was completed.

OE's funding delays and BC/TV's managerial and fiscal weaknesses contributed to BC/TV's failure to meet production goals during the first grant.

Much of the controversey over BC/TV's performance could have been eliminated if production schedules, geared to the known availability of funds, were revised and formally agreed on when it became apparent the project's funding would not be continuous.

Such a procedure would appear particularly necessary since the project was to be phase funded over a period spanning at least 3 fiscal years, and OE could not guarantee the availability of appropriated funds. (See p. 24.)

CHAPTER 1

INTRODUCTION

At the request of Congresswoman Edith Green, we have reviewed various aspects of two grant awards made by the Office of Education (OE), Department of Health, Education, and Welfare (HEW). Mrs. Green was principally interested in the bases for the awards and the results achieved. The purpose of the awards was to develop a bilingual and bicultural (Spanish-English) educational television series to be aired nationally for children from 3 to 8 years old.

The first grant award totaling $889,980 was made to the Berkeley Unified School District, Berkeley, California, on April 6, 1972, for the period through October 6, 1972. The grant represented the first phase of funding for the project. The original grant award was revised to provide an additional $1.5 million to the school district which eventually was to cover expenses through April 30, 1973.

Both the initial award and the revised award were funded under title VII of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 880b). This act provides funds to local educational agencies to develop and carry out demonstration bilingual and bicultural programs. To accomplish the purposes of this grant, the school district entered into contracts on April 17, 1972, and on October 30, 1972, with Bilingual Children's Television, Incorporated (BC/TV), a nonprofit corporation with headquarters in Oakland, California.

The second grant award totaling $3.5 million was made directly to BC/TV for 1 year beginning June 30, 1973. The grant was awarded under the authority of the Emergency School Aid Act (20 U.S.C. 1601), enacted June 23, 1972. This act authorizes OE to provide financial assistance to local educational agencies and to public and private nonprofit organizations to meet special needs incident to the desegregation of elementary and secondary schools.

SCOPE OF REVIEW

We made our review at OE headquarters in Washington, D.C., BC/TV headquarters in Oakland, and at production facilities in Los Angeles. The review included discussions with present and past officials of HEW and OE, officials of BC/TV and the Berkeley Unified School District, and production personnel under contract to BC/TV. We also examined available HEW and OE files and files made available to us at the school district and BC/TV headquarters.

CHAPTER 2

BASIS OF AWARD FOR FIRST GRANT

In making the first grant award, OE did not follow established criteria and procedures for awarding funds under title VII of the Elementary and Secondary Education Act. Also, the first grant was a sole source award, but OE was unable to provide us with written justification which supported the need for a sole source procurement. OE files and discussions with OE officials showed that the grant received the attention and support of top OE and HEW officials and the White House.

The grant was awarded to the Berkeley Unified School District for development of a national educational television show. Title VII conversely is intended to provide funds to local education agencies to assist children within a local school district. Additionally, because BC/TV--the prime contractor under the grant--could not be funded directly, OE requested the school district to apply for funding under the act. The school district was established as a funding agency through which contractual arrangements could be made with BC/TV for the purposes of the grant.

NEEDS ASSESSMENT AND FUNDING ARRANGEMENTS

Title VII provides that the school district must agree to use grant funds to meet a high-priority need within its jurisdiction and that the Commissioner of Education may award a grant only after determining such a need. The grant agreement was for development of a national television series to serve children from 3 to 8 years old. The project proposals submitted for funding under the first grant addressed the needs of Spanish-speaking and Spanish-origin children nationwide; they did not indicate that grant funds would be used to assist children in the Berkeley school district.

Before the award of the first grant, several legislative authorities were being actively considered as a source of funding for the television series. These authorities included the:

--Emergency School Aid Act

--Title VII of the Elementary and Secondary Education Act, as amended

--Cooperative Research Act, as amended (20 U.S.C. 331a), enacted July 26, 1954--provides grants to public or private nonprofit organizations or agencies for research and demonstrations in the field of education and for the dissemination of information from educational research.

According to the then Commissioner of Education, Dr. Sidney P. Marland, Jr., OE first considered the proposed Emergency School Aid

Act as a source of funds for the grant because it would specifically authorize the support of educational television programing. Dr. Marland said that, when it became apparent that this act would not be passed in time (it was enacted on June 23, 1972), alternate sources of funding had to be considered. Other OE officials told us that, because sufficient funds were not available under the Cooperative Research Act, BC/TV was ultimately funded under title VII through a grant award to the school district.

Officials of the school district told us that, just before the grant award, Dr. Marland and OE's then Deputy Commissioner for Development, Dr. Don Davies, requested the school district to apply for the grant so that funds could be passed on to BC/TV through a contract. By letter to OE's Deputy Commissioner for School Systems, dated October 17, 1973, the superintendent of the school district explained the circumstances under which the grant awards were made and accepted by the school district. The letter in part states:

> "Dr. Sid Marland, then Commissioner of Education, and Dr. Donald Davies, then Associate Commissioner of Education, [Deputy Commissioner for Development] specifically requested of me that the District handle the Bilingual Children's Television grant. I made it clear at the time that the District was not equipped from prior experience to manage such a grant, and that the District was not in the business of creating TV programs. Both * * * explained that the grant had to be channeled through a major school district and that the District would be compensated for its expenditure of staff, time, and energy by a 10% overhead on the first portion of the planning grant and by an 8% overhead on the second portion of the grant. This overhead arrangement was precisely what I presented to the Berkeley Board of Education and was the basis on which the grant was accepted."
>
> * * * * *
>
> "The grant was made to the Berkeley Unified School District by the Office of Education with full realization that the District was neither capable, experienced, or desirous of carrying out a production of a national television program. The understanding was that a nonprofit corporation called Bilingual Children's Television would be set up to which the Berkeley Unified School District would subcontract production, and, that BC/TV, in turn, would subcontract portions of the development of the national TV program."

Following the award of $889,980 under the first grant, OE continued to have problems in finding enough funds to continue the project. By letter

dated April 7, 1972, to the Superintendent, OE's Deputy Commissioner for Renewal 1/ Dr. Don Davies stated that:

> "* * * We hope to be able to provide an additional $3 million out of Fiscal Year 1973 funds to continue the development of this project at the termination of the six-month period. Our commitment for Fiscal Year 1973 funds is, of course, based on the usual understandings that (a) there must be adequate performance by the grantee and (b) the Congress must actually authorize and appropriate sufficient funds.
>
> "There is a potential problem relating to the use of the proposed $3 million in Fiscal Year 1973. The $800,000 grant that we are making to the Berkeley Unified School District will not be used to set up a private, nonprofit corporation during the initial six months. However, as you know, * * * [the Director of BC/TV] hopes to set up such a corporation as soon as possible. The $3 million that we hope to make available in Fiscal Year 1973 is now planned to come from two sources: (a) $1.5 million from the Bilingual Education program (Title VII of the Elementary and Secondary Education Act), and (b) $1.5 million under the authority of the Cooperative Research Act. It seems clear from the discussions that * * * [the Director of BC/TV] and my staff have had with the Office of Education's contracting office, that it will probably be impossible to use any Title VII funds to support any private, non-profit corporation. Accordingly, if such a corporation is established at the end of a six-month period, we may be faced with the situation of only being able to give $1.5 million from OE funds instead of $3 million.
>
> "I think there are several options available in the situation:
>
> > "The Office of Education will provide $1.5 million out of Fiscal Year 1973 funds to the corporation and the remainder of the funds will be provided by non-OE sources.
> >
> > "The total Bilingual Children's Television project would have two different operating entities, at least for legal purposes: (1) a private corporation and (2) the Berkeley Unified School District. The activities of the project would be split between these two entities, at least for formal purposes, even though, in fact, there would be one operation headed by * * * [the Director of BC/TV]. If this approach were used, the Office of Education could give

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1/ Because of an OE reorganization, the position of the Deputy Commissioner for Development was temporarily referred to as the Deputy Commissioner for Renewal.

$1.5 million to the Berkeley Unified School District under the authority of Title VII and $1.5 million to the corporation under the authority of the Cooperative Research Act.

"Do not establish a corporation and have the full $3 million in Fiscal Year 1973 go to the Berkeley Unified School District which would continue to be the legal agent for the project.

"I think the second option described above is probably the most suitable, but I would appreciate your thinking and that of * * * [the Director of BC/TV] on this subject. * * *"

On October 6, 1972, the school district was awarded an additional $1.5 million from title VII moneys. OE officials told us the Cooperative Research Act was not used because of the unavailability of funds.

Dr. Marland, in discussing the funding arrangements under the first grant, told us that it was customary for Government agencies to establish a funding agent to get the job done provided that the agent maintains control and accountability of the funds. He stated, however, that following the completion of the grant period, it was apparent that the school district did not properly monitor the project.

CRITERIA AND PROCEDURES

Under title VII, recommendations and priority rankings for grant awards are made on the basis of the reviews of external readers, internal readers, and recommendations from the State departments of education. OE established a two-stage application and approval process for awarding title VII grants.

In the first stage an applicant submits a preliminary proposal to OE and the appropriate State educational agency. Outside readers then rate the proposal content according to the following categories:

1. Problem significance and assessment of needs
2. Target group
3. Objectives
4. Program procedures
5. Projected daily schedule
6. Staff development
7. Parental involvement

8. Planning strategy for formal procedure

9. Local commitment

10. Budget

The rating form explains these categories. In total there are 20 specific criteria under the categories which are to be rated within a point range of zero to four, zero being the lowest possible score. If the proposal is rated favorably and recommended by the State agency the applicant is then requested to submit a final proposal for negotiation.

Although OE did not follow the above procedure for the initial award made under the grant, the California State Department of Education became aware of the proposal and encouraged that funding of the project be given serious consideration. Two outside readers also read the proposal and recommended that it be funded.

By letter dated December 1, 1971, California's Superintendent of Public Instruction and Director of Education advised Dr. Davies that staff members had brought to his attention the BC/TV project as it was conceived at that time. The superintendent said that the State had established as a top priority, programs that would benefit bilingual and bicultural students. He also stated that the intent and proposed design of the project had considerable merit.

Because OE at one time contemplated making the award under the Cooperative Research Act, two outside readers reviewed Berkley's initial grant proposal using criteria designed to evaluate proposals to be funded under the act. The rating form briefly explained the following four criteria: (1) educational significance, (2) personnel and facilities, (3) research design, and (4) economic efficiency. Both readers said the proposal was worthy of support and, on a scale of one to five--one being the highest possible rating--rated the application one and two.

Grant awards under title VII normally are made for 1 year. However, if progress is satisfactory and the terms and conditions of the grant are met, the project may be renewed assuming that enough funds are appropriated by the Congress. OE did not follow title VII criteria and procedures in awarding the additional $1.5 million of title VII funds to the grantee, and outside readers did not evaluate the proposal. In addition, no evidence was made available to us which shows that recommendations were solicited from the State of California, as contemplated by OE procedures.

Top OE and HEW officials and program personnel devoted a considerable amount of time to the proposal's development and were aware of its initial conception as early as June 1971. Contracts and grants personnel told us, however, that they first became aware of the proposal just before the first award was made on April 6, 1972. OE's management manual states that grants officers should be invited to participate in early

discussions of a proposal's funding, specifications, and any other problems that may affect the legal and business aspects of the project.

Contracts and grants personnel told us that they did not have enough time to adequately review the project proposal for the initial award and that they were under pressure to execute the grant as soon as possible. The grants officer who signed the grant award said he did not specifically question the basis for it because Dr. Davies and Dr. Marland had full knowledge of and support for the project. For the second award under the grant, both the grants officer and OE project officers stated that they were under pressure to issue the grant as soon as possible and that emphasis was placed on the need to provide continuity in funding the initial award under the grant.

SOLE SOURCE PROCUREMENT

Dr. Marland told us that it was decided that only one grant should be awarded to develop a bilingual and bicultural television series to be broadcast nationally. He said the rationale was that it would be better to make a single in-depth commitment to a national project rather than dilute Federal efforts by funding several projects. Dr. Marland said that three organizations were considered for the award but BC/TV was selected on the basis of its Director's talents and the nucleus of the organization that he had developed. There was no evidence either through our discussions with OE and HEW officials, or our review of OE and HEW files that OE considered other organizations for the grant award.

On February 7, 1972--2 months before the award of the first grant--OE established a sole source board whose responsibilities included reviewing any proposed discretionary grant at any stage before award, on the basis of a written request from program or contracts and grants personnel. An OE official told us, however, that the board did not review the initial award nor the $1.5 million revision. The board was not required to review the awards when they were made. But OE strengthened its sole source procedures by an April 17, 1974, directive requiring the board to review all grant applications proposed for funding through other than the normal process.

HIGH-LEVEL ATTENTION FOR THE GRANT AWARD

Our discussion with top OE and HEW officials and program and grants personnel, and our review of available documentation showed that the grant received the attention and support of top OE and HEW officials and the White House. The interest of the White House in the grant award is indicated in Dr. Davies' letter of March 30, 1972, to the then Deputy Commissioner for Planning, Evaluation, and Management, Dr. John R. Ottina. The letter states:

> "Due to the unusual interest of the White House, Secretary Richardson [HEW], and Commissioner Marland in the immediate funding of the BC/TV project, please ask * * * [the Contracts and Grants Division to] give this grant first priority. It is important that money flow before outside pressure builds."

Additionally, a letter dated March 31, 1972, from Mr. Stan Pottinger, HEW's Director, Office of Civil Rights, to Charles W. Colson, Special Counsel to the President, states:

> "The Bilingual Children's Television Program project is ready to be funded by HEW. A public announcement ceremony can be held at any time after Monday, April 3, 1972, depending, of course, on the schedules of the primary participants. A press release describing the project is scheduled to be released shortly. * * * While this will get some play, it should not detract from any oval office ceremony that you may wish to have within the next few weeks."
>
> * * * * *
>
> "The proposal has gained an excellent amount of support from a wide variety of Spanish speaking and Anglo groups. The project director * * * is an immensely capable and attractive figure who has done an excellent job of gaining support and resources for the project. Oval office exposure on the announcement of this program would be a good move.
>
> "A list of prominent Spanish-speaking persons and others who might attend an announcement ceremony is attached (Tab B.). It is lengthy, but can be reduced to a number appropriate for a ceremony. Each person listed has expressed a high degree of support for the program. * * *"

Mrs. Green also provided us with information which indicated that Maurice Stans telephoned the Director of BC/TV in January 1972 to solicit funds for the Committee to Reelect the President. The source of her information reportedly had taken a deposition from two women who had overheard the alleged conversation. Purportedly, the Director of BC/TV stated that he would obtain funds for the President's reelection campaign from wealthy members of the Spanish-speaking community.

We found that the source of the above allegations did not obtain any deposition. One of the women told us that she had overheard the alleged conversation but she could not confirm or deny any solicitation of funds. The other woman told us that she did not have any firsthand knowledge of any such conversation.

The Director of BC/TV told us that he has not had any association with Maurice Stans or his associates. Also, the Director's personal secretary told us that she had never received a phone call or any other message from Maurice Stans or any other member of the Committee to Reelect the President.

The Director told us that he believed that the alleged conversation was with Mr. Stan Pottinger, Director, Office of Civil Rights, HEW. The Director said that, in the presence of the two women, his secretary

said, "Stan's on the phone." The Director said it is perfectly natural for his secretary to contract a noun by saying "Stan's on the phone," rather than "Stan is on the phone". We contacted Mr. Pottinger and he told us that it was his judgment that the Director's recollection was accurate. Mr. Pottinger also told us that he had contacted the Director in trying to locate bilingual expertise in the Chicano community.

CONCLUSION

The grant award was made under the provisions of title VII which require that grant funds be used only to assist children within a school district and that the Commissioner of Education award such a grant only after determining such a need. The grant award, however, was for the development of a national television series and the proposal did not indicate that grant funds would be used to assist children of the Berkeley school district.

Because the HEW Audit Agency has made a detailed examination of the activities carried out under the first grant award and a final settlement with the school district has been reached, we do not plan to pursue the matter further. The Audit Agency findings, along with the legal considerations involved in the final settlement, are discussed in chapter 4 of this report.

OE awarded the grant contrary to its established procedures and criteria for awarding title VII funds. Additionally, OE did not follow sound management practices in that a sole source award was made without evidence that a sole source procurement was necessary. OE, however, has since strengthened its procedures by requiring that such awards receive prior approval of a sole source board.

CHAPTER 3

BASIS OF AWARD FOR SECOND GRANT

The second grant award was made at the direction of the Commissioner of Education-Designate, Dr. John R. Ottina, over the strong objection of program and grant officials. By letter dated May 15, 1973, to Dr. Ottina, the Chief of the Higher Education Branch, Contracts and Grants Division, recommended that the grant award not be made to BC/TV. The letter stated in part:

> "In summary, contemplating issuing a grant to an organization which is insolvent, sorely dependent upon foundation and corporate funding to produce, has a deficit, cannot produce a balance sheet, lacks adequate financial management, failed to perform under a prior arrangement, in addition to the other problems enumerated along with possibly being liable to OE for large unallowable costs can only lead to more problems and would be imprudent and not in the best interest of the Government."

The Director of the Contracts and Grants Division, the two OE project officers assigned to the first grant, and OE's Chief of Audit Liaison and Coordination agreed with this recommendation.

By letter 4 days before the grant award, the Director of the Contracts and Grants Division personnally advised Dr. Ottina not to make the award. The letter in part states:

> "I continue to advise you strongly against this award to BC/TV, based upon our experience with that organization [BC/TV] as a "subcontractor" * * * and adverse [HEW] draft audit report * * * which we discussed on June 15, 1973. It is my opinion that you will not be able to reasonably defend against the criticism which inevitably will follow an award. Under these circumstances I do not feel that I can appropriately issue a grant without written direction from you."

On June 30, 1974, Dr. Ottina, by letter, directed the Director of the Contracts and Grants Division to make the award. Dr. Ottina stated that there was no legal obstacle in making the award and that he had also considered other factors which included:

> "* * * A. BC/TV submitted an application in open competition for ESAA/TV [Emergency School Aid Act/Television] grants. Approximately 50 such applications were received, and were reviewed by experts from outside OE and OE program staff. The result of this review rated BC/TV as second best among all proposals. It was therefore selected as one of five applications actually recommended for funding. Such a

standing in a highly competitive award process gives me strong indication that this project merits Federal support.

"B. The grant award as constructed by my request contains special conditions and safeguards to address issues raised by auditors and others regarding managerial and Fiscal control over Federal funds by BC/TV in their connection with the ESEA VII [Elementary and Secondary Education Act, Title VII] award to Berkeley Unified School District * * *. With the inclusion of these conditions, I believe that a wholly sound grant can be awarded which fully will meet the objectives of the ESAA/TV program.

"C. Two independent and private foundations have reviewed BC/TV, and recently made sizable grant awards. This both expands the potential impact of Federal funds and illustrates a separate vote of confidence in the BC/TV organization. Such Federal-private partnership of mutual financial support is a rare occurrence. Few of our thousands of other non-governmental grant recipients are able to attract this type of private support. Their positive judgement supports my own in this award.

"D. The efforts initiated under the ESEA VII award to Berkeley Unified School District, in which BC/TV participated, represent a substantial investment of Federal funds toward the objective of expanding bilingual educational television. This ESAA/TV award to BC/TV will continue and expand this important effort. * * *"

PANEL EVALUATION

The Emergency School Aid Act provides funds for developing educational television programing. Section 711. (b)(1) states that:

"The Assistant Secretary shall carry out a program of making grants to, or contracts with, not more than ten public or private nonprofit agencies, institutions, or organizations with the capability of providing expertise in the development of television programming, in sufficient number to assure diversity, to pay the cost of

development and production of integrated children's television programs of cognitive and effective educational value."

OE issued a program announcement in January 1973 listing the categories in which grants would be awarded and the criteria by which applications would be accepted and evaluated. The announcement also provided for a panel to review and evaluate the proposals. One category dealt with bilingual and bicultural approaches to assist minority group children from environments in which the dominant language is other than English. BC/TV submitted its proposal in this category.

OE prepared a "Management Manual for Television Grants Administered under Section 711 - Title VII, P. L. 92-318" for use by OE supervisors and staff personnel responsible for implementing the act and panelists assigned to review and evaluate grant proposals. This manual contained preaward administrative procedures, the program announcement, proposed rules and regulations, application blanks, and panelists' review and rating forms. The manual states that the panel will be composed of:

> "3 NCET [National Center for Educational Technology] representatives assigned by the Associate Commissioner for Educational Technology;
>
> "1 BEEO [Bureau of Equal Education Opportunity] representative assigned by the Associate Commissioner of BEEO; and
>
> "6 non-OE persons representative of those minority groups which constitute the target populations, at least two of whom shall be Black, at least two Spanish surnamed (one of whom shall be bilingual), and at least two females. Two of these non-OE panelists will be recruited from the ranks of public TV; and one will be a person employed in a school capacity * * * where his/her duties focus on minority education and/or intergroup relations."

All panel members were required to disqualify themselves from evaluating proposals where there was a conflict of interest.

OE solicited recommendations for the six non-OE panelists from such organizations as the National Association of Educational Broadcasters, Chinese Media Committee in San Francisco, Chicano Public TV Producers Association, and Black Efforts for Soul in Television. From the recommended panelists, OE selected six panel members who met the qualifications in its management manual.

The panel met in March 1973 to read and evaluate the television proposals. BC/TV was one of 15 proposals submitted in the bilingual and bicultural category. Six of these proposals, however, were

eliminated before the panel met because they did not meet the requirements. For example, OE told us one applicant was ineligible because it was not a nonprofit organization.

The panelists evaluated 52 proposals, 9 of which were in the bilingual and bicultural category, on the following criteria: needs assessment, statement of objectives, program content and design, staffing, facilities capability, supplementary materials, parent and community involvement, resource management, and formative evaluation. Each criteria had a maximum number of points that the panelists could assign to it, and the overall maximum score in the bilingual and bicultural category was 71. The BC/TV proposal received a score of 61.1 which was the highest score in the bilingual and bicultural category and the second highest rating of all 52 proposals. The mean average of the four Government panelists' scores totaled 61.95 as compared to 60.29 by non-Government panelists.

We contacted the panelists to determine (1) if there had been any attempt to influence their ratings, (2) how long they had to read and rate the proposals, and (3) if past performance was considered in judging the proposals. All of the panelists stated that they did not consider past performance and that there had not been any attempt to influence their ratings. Most of them felt they had enough time to read and rate the proposals but emphasized that they put in very long days.

PAST PERFORMANCE CRITERIA

As stated earlier, the Emergency School Aid Act specifies that grants be awarded to "organizations with the capability of providing expertise in the development of television programing." However, as discussed above, the panelists who reviewed the proposals for educational television told us they did not consider past performance in their evaluation.

Although HEW regulations for educational television assistance under the Emergency School Aid Act did not become effective until April 24, 1973, the criteria in the proposed regulations, as cited in the OE management manual which panelists used in reviewing proposals, were identical to the criteria appearing in the final regulations. With respect to past performance the regulations state that applicants are required to submit:

> "(2) A statement of the name, address, position, duties, prior experience in educational television and school and community affairs, race, and (in the case of applications related to an activity described in [subsection] 185.72(a)(1) the bilingual/bicultural background of all persons permanently employed (or to be employed) in positions of responsibility by the applicant on its development, production, and administrative staffs;
>
> * * * * *

"(4) A statement of past activities engaged in by the applicant or its officers or employees indicating the relative capability of the applicant to provide expertise in the development of integrated children's television programing, and to develop and produce the proposed television programs;"

OE's January 1973 program announcement for the educational television grants states that:

"Capability will be determined by examination of prior relevant activity, demonstrated knowledge of potentially effective media utilization systems, adequacy of production facilities to be employed, staff capability, and credibility in the target communities."

The law contemplated that grantees' capability would be a factor in making grant awards, and both the regulatory provisions concerning the information that applicants must submit and the program announcement indicate that prior relevant experience would be considered in determining capability. However, the criteria set forth in the regulations for evaluating grant applications does not specifically consider past performance.

OE officials told us that, if the panel had considered past performance as a criterion and it was heavily weighted in the point system, awards would have been limited to the major educational television stations in the country. They stated that to limit the number of awards in this manner would contradict the intent of the Emergency School Aid Act. OE officials also told us that the regulations provide that the Assistant Secretary for Education can, at his discretion, refuse to award a grant under the act if the proposal does not show "sufficient promise." They told us that past performance can be considered in determining whether sufficient promise exists.

We recognize that emphasizing past performance as a criterion would tend to limit grant awards to established television stations. We believe, however, that the criteria set forth in the regulations should specifically consider past performance. Some consideration to past performance, particularly where large dollar amounts are involved, would increase the possibility of a project's success and insure that available funds are used to support the most worthwhile projects.

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The foregoing discussion on the lack of past performance criteria is not intended to suggest that BC/TV would not have been funded had the evaluation panel considered past performance. The BC/TV proposal evaluated by the panelists was dated March 9, 1973, which was approximately 7 weeks before the completion of the title VII grant period. In

its proposal for emergency school aid funding, BC/TV discussed in detail its accomplishments during the first part of the title VII grant; however, the proposal did not relate these accomplishments to the initial goals and objectives. Chapter 5 of this report discusses the accomplishments under the grants.

SPECIAL CONDITIONS AND SAFEGUARDS

On January 31, 1973, the OE grants officers requested the HEW Audit Agency to audit the first grant because the school district had not notified the grant's office of subcontract awards as required by the conditions of the grant.

The HEW audit report, which was issued on September 28, 1973, disclosed, among other things, that BC/TV had not been complying with Federal requirements regarding subcontracting, the use of consultants, staff salaries, and travel practices. The report also stated that BC/TV's control over the project would have been strengthened if it had (1) improved its financial reporting and control system and methods for monitoring project activities, and (2) developed a financial management staff which was fully conversant with corporate financial controls and Government regulations.

The grant award was subject to detailed special conditions and safeguards to correct BC/TV's managerial and financial weaknesses as disclosed by the Audit Agency. The grant award stipulated that BC/TV had to comply with the special terms and conditions within 90 days before any funds would be released under the grant. On August 3, 1973, 34 days after the grant award, the grant officer issued a revised notification of grant award in which he stated in part:

> "It being the sense of the Office of Education that the grantee has substantially complied with the intent of the Special Terms and Conditions and the BC/TV ESAA TV Grant Safeguard Document, the paying office is hereby authorized to release funds * * *."

The special terms and conditions of the grant required that BC/TV hire a public accounting firm to certify that its accounting system is in accordance with generally accepted accounting principles and is adequate to provide all required financial and managerial data. The conditions of the grant also required that the accounting firm pass on the competence of a financial manager.

By letter to BC/TV dated October 26, 1973, a public accounting firm reported on BC/TV's progress in improving the systems of financial controls, accounting, and management reporting. The firm noted that a competent individual had filled the position of Director of Finance. Also, the firm concluded that BC/TV's accounting system was now capable of providing information for financial and other management control reports in accordance with generally accepted accounting principles.

In addition to the improvements required of BC/TV's managerial and financial controls, OE required that BC/TV establish a special bank account for the grant funds; this was done on July 20, 1973. The conditions of the grant also required that all proposed withdrawals be approved by the OE project officer. To insure BC/TV's compliance with this provision and the other provisions of the special grant terms and conditions, OE assigned an onsite project officer to supervise BC/TV activities. On the basis of our review at BC/TV headquarters, we believe that the OE project officer closely monitored BC/TV's activities to insure compliance with the special terms and conditions of the grant.

CHAPTER 4

SETTLEMENT OF HEW AUDIT FINDINGS

The HEW audit of the grant awarded to the Berkeley school district was prompted to a large extent by the grants officer's not being told of the contracts between the school district and BC/TV. Further, grants officials told us that the award to the school district was made with the understanding that the school district would not act merely as a conduit whereby nearly all of the grant funds would be subcontracted to BC/TV, an ineligible applicant under title VII legislation. Such understanding, however, was not formally agreed to.

Title VII legislation provides that the activities carried out under the grant must be administered by or under the supervision of the applicant. The terms and conditions of the grant provide that the applicant may enter into contracts or agreements for the purposes of the grant provided that the proposed contracts are approved by the grants officer in writing.

The initial contract between the school district and BC/TV was executed on April 17, 1972, 11 days after the grant award. By separate letters dated April 28, 1972, and May 30, 1972, the school district belatedly notified the OE project officers that a portion of the grant had been subcontracted. Neither the project officers nor the school district, however, advised the grants officer of the contract. Consequently, on March 1, 1973, the grants officer suspended further funding under the grant until all contracts and subcontracts were submitted for approval.

BC/TV and school district officials stated that the proposal clearly stated that production subcontracts would be let. The proposal states:

> "* * * The production will include sub-contracting for almost every aspect as there is no permanent production staff except the executive producer and his assistant and the writers. Sub-contracts will be made for animation, puppetry, graphics, music, film-processing, studio facilities, set design, creative personnel for live sections, editing."

Further these same officials told us that various OE officials were aware of the subcontracts that were let because they personally visited subcontractor facilities. A BC/TV official told us that BC/TV relied on the school district to receive the grants officer's approval before awarding the contracts. A school district official told us that failure to notify the grants office was an oversight on the part of the school district.

HEW AUDIT FINDINGS

The HEW audit report, dated September 28, 1973, examined various aspects of the grantee's operations for April 6, 1972, through April 30, 1973. The review determined whether the costs reported by the school

district and BC/TV were acceptable--as to reasonableness, allowability, and allocability--in accordance with grant terms and conditions, the HEW Grants Administration Manual, and applicable Federal regulations.

The Audit Agency reported that the grantee spent $325,337 more than the total grant award of $2,389,980. Of the total costs of $2,715,317 reported for the period, the Audit Agency recommended the disallowance of $250,709, which consisted of $93,279 in direct costs and $157,430 in overhead. The Audit Agency also questioned $947,786 in BC/TV subcontracts and $1,516,822 which was attributed to the basic contracts between the school district and BC/TV because the grants officer had not approved them as required.

The school district agreed with a disallowance of $83,279 which included expenditures for travel, office furnishings, and salaries. The major item which the school district did not agree with was the recommended disallowance for overhead totaling $157,430. The principal point of disagreement was the overhead rate which should be used. The school district applied an overhead rate of 8 percent to the amount of the grant award; the Audit Agency, however, was of the opinion that the appropriate rate to be applied was 4.59 percent which represents the rate established by the California Department of Education for title VII projects.

The superintendent of the school district told us that Dr. Marland, OE's former Commissioner, and Dr. Davies, OE's former Deputy Commissioner for Development agreed to the overhead rate being questioned by the auditors as a condition for the school district acting as a fiscal agent on behalf of BC/TV. (See ch. 2.) Neither official, however, could recall such an agreement.

LEGAL CONSIDERATIONS

By letter dated May 2, 1973, to the Deputy Commissioner for School Systems, HEW's General Counsel expressed an opinion on the approvability of the basic contracts between the school district and BC/TV under the grant, and on the allowability of the costs incurred under the contracts.

The General Counsel's opinion states:

"* * * We have reviewed the two contracts in question and do not believe they are approvable in their present form. A number of activities described in the contracts to be carried out by BC/TV, in our view, appear to be outside the scope of Title VII and regulations thereunder and outside the purview of the grant as modified by the amendment of April 6, 1972. These include:

"'Developing strategies for long-term funding (for BC/TV); working on details of an independent, non-profit corporation that would eventually, after six

months or a year, separate itself from the Berkeley Unified School District.'

'Assembling an initial planning staff [for BC/TV] of 10-20 people, at least to the extent related to the establishment of BC/TV.'

'Finding sufficient office and studio space [for BC/TV], preferably in the San Francisco Bay Area.'"

"The contracts also involved a potential conflict-of-interest problem, since * * * [two school district officials], who would be supervising the contracted work for the school district, are officials of BC/TV who would be paid for their services to BC/TV from grant funds.

"Furthermore, the contracts are quite vague as to the scope of services to be performed by BC/TV, the method of determining compensation, and the allocation of funds and responsibilities between the grantee and BC/TV.

"For the above reasons, we do not believe that Berkeley's contracts with BC/TV were approvable at the time they were entered into. * * *"

Concerning the allowability of the costs incurred under the contracts, the opinion stated:

"* * * Whether a cost is allowable depends, not on whether the activity involved is performed directly by the grantee or indirectly by a third party, but ultimately on whether the activity is authorized by the relevant statutory and regulatory provisions and whether it is in accordance with the approved project proposal.

"Therefore, if the costs of some of the activities carried out under the contract are otherwise properly chargeable to the grant, we do not believe the failure to submit the contracts for approval bars reimbursement of the grantee for such costs. * * *"

Counsel's opinion further stated that the allowability of costs is a matter of judgment to be determined by appropriate administrative and fiscal officers of OE.

SETTLEMENT OF AUDIT FINDINGS

The grants officer devoted a considerable amount of time in analyzing the audit report and other data available at OE and BC/TV. On February 21, 1974, the grants officer recommended to the Director of

OE's Contracts and Grants Division that a minimum of $504,918 be disallowed of the total costs reported under the grant. Most of the costs recommended for disallowance were attributed to the overhead charged by the school district, which was then estimated at about $162,000, and to a cost-plus-a-percentage-of-cost production subcontract totaling $235,604.

On March 21, 1974, the Commissioner of Education, Dr. Ottina, at the recommendation of the Director, Contracts and Grants Division, approved payment to the grantee for $2,389,980--the total amount of the grant award. The total amount of cost disallowances was determined to be $325,337--the exact amount of expenditures incurred by the school district in excess of the grant award.

According to the recommendation of the Director of the Contracts and Grants Division, the rationale for the settlement is as follows:

> "* * * The two primary considerations at work in the recommended settlement are allowance of a second-tier subcontract with * * * [the subcontractor] which was awarded by BC/TV on an illegal cost plus a percentage of cost basis and recognition of the commitment made to * * * [the superintendent] before the grant award concerning payment of an 8% overhead. I believe it is within the authority of this Division to settle the grant cost questions along these lines and, having checked with OGC (Office of General Counsel) and found them reluctant to advise us either way, so recommend. My experience in Government contracting leads me to conclude that a court of law would not sustain the contention that compensations may be denied to a Grantee for benefits bestowed simply because those benefits were contracted for on an illegal basis. Reducing the subcontract amount to reflect only allowable costs plus a legal fixed fee of 10% places it within the proposed settlement amount. As to the overhead question, while the department reserves to itself the authority to negotiate overhead rates (Grants Administration Manual 1-73-60.D) I believe it would be unreasonable and imprudent for the Office of Education to refuse to honor a pre-grant agreement with * * * [the superintendent] that an 8% overhead figure would apply. Aside from the department's reservation of the right to establish overhead rates in HEW, recognition of the negotiation of a predetermined overhead rate would not be improper.
>
> Our information indicates that * * * [the school district] will be most willing to settle on this basis since BC/TV has obtained funds from non-government sources which have been or will be used to pay the $325,337 overrun. The release of the entire $600,000 now withheld will permit * * * [the school district] to recover its promised overhead and the advances of cash to BC/TV and should leave the School District whole. * * *"

CONCLUSION

Many of the findings the Audit Agency disclosed would have been avoided had the Berkeley school district more closely supervised the activities of BC/TV. Closer supervision could have prevented many of the improper charges against grant funds and may have helped to correct BC/TV's management and financial weaknesses.

CHAPTER 5

ACCOMPLISHMENTS OF THE TWO GRANTS

The basic objective of the BC/TV proposal was to develop a bilingual and bicultural (Spanish-English) educational television show to be aired nationally. Generally, the proposal intended to tie together the following:

--The plight of Spanish-origin people, particularly their educational difficulties.

--The developments and findings of research in early childhood education.

--The power of the television medium.

--The experience of Childrens Television Workshop (Sesame Street) and other related television experiments.

The central concept of the program to be developed was based on the general goals of helping children to feel better about themselves and develop academic skills and problem-solving abilities.

To develop the television series, the proposal was to be phase funded. The purpose of the phase funding was to provide OE close management supervision of program and budget decisions. Funding of each successive phase was to be contingent on the grantee's performance during the preceding phase and the availability of appropriated funds.

Sixty-five 1/2-hour shows were completed at a cost to OE of about $5.9 million, and the Public Broadcasting Service has agreed to make the shows available to participating stations in the fall of 1974. Although BC/TV produced 65 shows during the course of the series development, considerable controversy existed over its performance, particularly during the latter months of the first grant. BC/TV did not meet a major production goal; according to the HEW audit report, only one of five test shows was completed.

Both OE and BC/TV officials gave many reasons for not meeting this goal. OE project officers were of the opinion that BC/TV devoted too much of its efforts to the promotional aspects of the series rather than on production; the grants officer believed that BC/TV was unable to produce primarily because of the management weaknesses disclosed by the HEW audit report. BC/TV officials, however, said that they were unable to produce primarily because of OE funding delays.

It is difficult to assess the extent to which BC/TV's management contributed to its not meeting the production goals under the grant. In our opinion, however, BC/TV did not have enough funds to meet its

production goals by the end of the grant period. OE suspended funding on two ocasions and BC/TV did not receive continuation funding beyond January 31, 1973, as was originally planned. Also, BC/TV was denied additional funding on another occasion because of the impending HEW audit.

CHRONOLOGY OF EVENTS

On at least two occasions, Dr. Davies, OE's Deputy Commissioner for Development, gave written assurance to the Berkeley school district and BC/TV that it was OE's intent to provide $3 million of fiscal year 1973 funds for the project's development. Dr. Davies stated, however, that funding was contingent on BC/TV's performance and the availability of appropriated funds. Additionally, BC/TV and school district officials told us that OE had given verbal assurances that funds would be made available throughout project development.

The first grant was extended on October 6, 1972, and provided $1.5 million for the period ending January 30, 1973. The grant award incorporated by reference a school district supplemental proposal dated October 4, 1972. The supplemental proposal stated that an extension of the project was requested to continue the activities in the original funding document. The supplemental proposal listed production goals which included 5 hours of programing by mid-February 1973 and an additional 5 hours of programing by mid-April 1973.

On October 17, 1972--11 days after the supplemental grant award--the grants officer amended the grant, limiting the release of funds to $500,000 until BC/TV provided a revised work statement for the period October 6, 1972, through January 30, 1973. BC/TV complied with this request and on November 17, 1972, the grants officer rescinded the grant amendment of October 17, 1972, and released the entire amount of the award to BC/TV. The revision incorporated as the work statement for the period ending January 31, 1973, the grantee's revised proposal which provided for, among other things, the production of five test shows between February 1 and April 15, 1973.

On January 25, 1973, the superintendent of the Berkeley school district requested extending the grant period from January 30, 1973, until April 30, 1973, at no additional cost to the Government. The request was made in anticipation that there would be a delay in receiving funds from OE for the project period February 1 to October 1, 1973. The superintendent stated that in anticipation of this delay, BC/TV had to cut back on its normal activities so that it could continue its work over a longer period of time. An OE official told us that OE had intended to provide BC/TV an additional $1.5 million from funds authorized under the Cooperative Research Act; however, sufficient funds were not available.

On January 30, 1973, the grants officer amended the terms of the grant to extend the period of performance until April 30, 1973. The revision stated that the extension was not to result in any increased costs

to the Government and all other terms and conditions of the grant were to remain unchanged.

On February 28, 1973, BC/TV requested from OE $350,000 for the production of four test shows which were to be completed in April 1973. OE however, did not respond to this request in view of the impending review by the HEW Audit Agency. Additionally, the grants officer suspended funding on March 1, 1973, pending the submission and approval of all contracts and subcontracts that were entered into under the grant, and funding was not resumed until after the grant period.

CONCLUSION

The Berkeley school district and BC/TV were expecting continuous funding over the project's development and planned accordingly. As delays in funding occurred, or original funding plans failed to materialize, production schedules slipped. The funding lapses in conjunction with the BC/TV management weaknesses disclosed by the Audit Agency appear to have contributed to BC/TV's failure to perform under the grant.

Much of the controversy over BC/TV's performance could have been eliminated if production schedules, geared to the known availability of funds, had been revised and formally agreed on when it became apparent that funding of the project would not be continuous. Such a procedure would appear particularly necessary since the project was to be phase funded over a period spanning at least 3 fiscal years, and OE could not guarantee the availability of appropriated funds.